**Zoning Board Annual Report 2012 and 2013**

Presented to Zoning Board on July 19, 2013

**2012 Findings**

A total of 26 cases were heard. 23 were approved, giving an **approval rate of 88.5%**. Of the 3 that were not approved, 1 of them was a denial; the other was an appeal that reversed the zoning officer’s decision, and the other a dismissal. It would be more accurate to say that the **true approval rate was 96%**, eliminating the dismissal and appeal.

Of those 26 cases, 69 variances were granted. 55 of the variances granted were “c” variances: building coverage, expansion of a non-conforming structure, minimum height requirement, minimum percentage of landscape in the front yard, maximum lot coverage, minimum lot area, minimum lot depth, minimum lot width, parking between the building and street, minimum number of parking spaces required, minimum parking aisle width, minimum parking space dimensions, front yard setback, rear yard setback, sideyard, and signage. 14 of the variances granted were “d” variances: density, expansion of a non-conforming use, maximum height, and use.

The greatest numbers of variances granted were for the R-1, One and Two Family Housing District:

* 49% of all the variances were for the R-1 zone.

The next highest percentage of variances granted were in the:

* Harsimus Cove Historic District, 15%, and the
* R-3 Multi-Family Mid Rise District, 13%.

The greatest type of variance granted was for use, 9 out of 69, or 13%.

* Of those 9 use variances, 3 or 33% were granted in the R-1 District.

This was the highest percentage of use variances granted. Although:

* the Harsimus Cove and Paulus Hook Historic Districts also grant 22% of the use variances, respectively.

All the variances for signage, minimum parking space dimensions, parking between the building and street, and lot width were also in the R-1 zone. To be specific, the variances granted for the R-1 zone mainly affected the size of an existing undersized lot. Additionally, conversion of an existing building either commercial or residential to a House of Worship was also frequently before the Zoning Board. House of Worship is a permitted use in the R-1 zone, but many of the existing buildings and lot sizes cannot meet the bulk and setback requirements.

***See Tables A and B***

**2013 Findings**

A total of 54 cases were heard. 47 were approved, 4 were denied and 3 were dismissed, giving an **approval rate of 87%**. However, it would be more accurate to not include the dismissals because they were never heard by the Zoning Board. That changes the **approval rating to 92%, which is much more of an accurate** idea of the number of cases approved.

Of those 54 cases heard, 62 variances were granted. 23 of the variances granted were “d” variances: use, maximum height, expansion of a non-conforming use, and a cell tower facility in the Historic District. 38 of the variances granted were “c” variances: building coverage, minimum height, required percentage of landscaping in the front yard, lot coverage, lot area, lot depth, lot width, number of required parking spaces, parking space dimensions, front yard setback, rear yard setback, side yard setback, and signage (maximum allowable number and area).

The greatest numbers of variances granted were for the R-1, One and Two Family Housing District:

* 75.8 % of all the variances were in the R-1 zone.

The next highest percentage of variances granted were in the

* Harsimum Cove Historic District and the Neighborhood Commerical District., both 6.5 % each.

The greatest type of variance granted was for use, 15 out of 62, or 24%. Of those 15 use variances:

* 10 of them, or 67%, were in the R-1 zone.
* 11% of all the variances were for lot depth, or 7 out of 62, that is the next largest variance granted after use.

As with use, the greatest number of lot depth variances were granted in the R-1 zone:

* 7 out of 7, or 100%.

10% of all the variances granted, or 6 out of 62, were for rear yard setback. This time, however, it is within multiple zones:

* 50% of them were in the R-1,
* 17% were in the Hamilton Park Historic District, Neighborhood Commercial, and Paulus Hook Historic District, respectively.

All the variances granted for maximum height, building coverage, required percentage of landscape for the front yard, lot coverage, parking requirements (number and dimensions of spaces), sideyard and signage were all within in the R-1 zone. The great majority of applications were within the “Italian Village” Neighborhood. This would be the area encompassing north of Chirstopher Columbus Dr, west of Coles Street, and northwest Harsimus Cove. All of the variances sought for this area were for use and height – meaning that the Zoning Board had decided that special reasons existed multiple places within this neighborhood to build more than a 3-story, 2-family house.

An additional area of interest was Northern Kennedy Boulevard. The variances were mainly to convert residential ground floors into office or commercial space.

***See Table C and D***

**Staff Recommendations**

The Zoning Board is the only board with the jurisdiction to hear “d” variances, so it would be assumed that the most type of variances to be granted by this Board would be “d” variances, or in this case, a use variance. However, attention should be given to the large number of variances granted in the R-1 zone in 2012 which then increased by 25% in 2013. The amount of use variances double in the R-1 zone from 2012 to 2013. Municipalities are encouraged to zone by ordinance, and not to re-zone by the indirect means of granting variances. This is especially true in the granting of “d” variances, as “d” variances are only to be granted as an exception, for special reasons, rather than rule.

The legislative enactments requiring periodic reevaluation of municipal master plans and zoning ordinances, N.J.S.A. 40:55D-89, 40:55D-89.1, and annual reports and recommendations from the boards of adjustment, N.J.S.A. 40:55D-70.1, reflect a legislative policy intended to insure that a municipality’s master plan and zoning ordinance reflect contemporary needs and conditions, and the governing body is kept informed of provisions the zoning ordinance that generate variance requests. This, the mandatory reexamination by the planning board of the master plan and zoning ordinance, at least every six years, (*now ten*) is intended to inform the governing body of the need for revision in the plan and ordinance based on significant changes in the community since the same such reexamination. Similarly, the annual reports by the boards of adjustment summarizing variance requests throughout the years and recommending amendments to the zoning ordinance are designed to avoid successive appeal for the same types of variance by encouraging the governing body to amend the ordinance so that such appeal will be unnecessary. When an informed governing body does not change the ordinance, a board of adjustment may reasonably infer that its inaction was deliberate.

Medici v. BPR Co., N.J. 1 (1987) (content in italics added by staff)

With so many variances, particularly use variances, being granted with the R-1 zone, it stands to reason that the zone should be modified, or no more use variances should be granted for this zone. It is important to take a look at the evolution and the history of the R-1 zone in Jersey City, in order to understand the intent and purpose.

In 1918, the New Jersey State Legislature gave large cities the power to regulate and limit the height, and bulk of buildings. The first zoning enabling legislation was enacted in 1930. In 1931, Jersey City had its first Zoning Ordinance. The 1931 Jersey City Zoning Map divides the whole city into five districts:

First Residential District, Second Residential District, Business District, Commercial & Light Industrial Districts, and Heavy Industrial District.

Many of the districts then zoned for residential (First and Second Residential Districts) continue today to be residential. However, there is a significant amount of land downtown, particularly within the area to the west of Brunswick Street, that was zoned for Commercial & Light Industrial, that later became residential zones. It is also helpful to take notice that much of downtown that now lies within an Area of Redevelopment was once Light or Heavy Industrial. The zoning map explains that the First Residential District was strictly for single family houses. “Apartment buildings,” or for that matter, anything more dense than a single family house would be permitted in the Second Residential District. There were no business, commercial or industrial permitted in either of these zones. That zoning was in place until 1963.

The zoning map in the 1963 zoning ordinance says it was amended from the officially adopted map from May 17, 1957. Planning staff can reproduce no records of this map from 1957, but planning records show a map from May 15, 1951, based on an original adopted map from February 6, 1931. (See Map 1.) Planning surmises that the 1957 amendment showed the construction of the New Jersey Turnpike, as all of the Jersey City exits were opened in 1956.

The 1963 zoning map differentiates from the 1951 zoning map by creating zoning districts that are more specific and distinct than previously. In 1963 the six zones were:

Residential District “A,” Residential District “B,” Business District “A,” Business District “B,” Commercial & Light Manufacturing District, and the Industrial District.

Different Federal programs then began to usher in new zoning that reflected the changes away from Urban Renewal to zoning that was geared more towards building neighborhoods. The 1971 City of Jersey City PLANNED UNIT DEVELOPMENT ORDINANCE, introduced Residential and Non-Residential Planning Unit Development Areas. In effect, this ordinance went far to separate residential from commercial uses. Larger residential tracts clustered on 3 acres were permitted to have a density of 60 units per acre per lot. Non-residential tracts were intended to become large employment centers and regional shopping facilities. This is also the first zoning ordinance to incorporate detailed bulk, parking, and design standards.

It is not until the 1974 zoning amendment that the delineated zoning districts begin to look more like what currently exists:

R-1, Low Density Residential, R-2 Low Density Residential, R-3 and R-3A Medium Density Residential, R-4 High Density Residential, C-1 Central Business District, C-2 Office and Retail, C-3 Shopping Center, C-4 Finance and Business District, I-1 Automotive, Construction, Office, I-2 Intensive Industrial, and I-3 Industrial Park.

For illustrative purposes, here are some examples of what would have been permitted in the four residential districts:

* The R-1 permitted a 3-story 1 or 2-family house on a 25x100 lot.
* The R-2 permitted 1 and 2 families, along with townhouses, and garden apartments. All residential buildings were permitted to 4 stories or 40 feet, 2-family housing on a 2,500 sq ft lot was permitted the highest density at 35 units per acre. Retail and offices were permitted on the ground floor of garden apartments and had to have access to one of the following streets:

Hudson Boulevard (J.F. Kennedy Boulevard) north of Newark and New York Railroad; Summit Avenue north of Sip Avenue; Palisade Avenue; Newark Avenue; Montgomery Street; West Side Avenue north of Lincoln Park; Jackson Avenue (MLK Dr.); Ocean Avenue; and Communipaw Avenue

* The R-3 and R-3A permitted all the uses from R-2 with the addition of medium rise apartments. The density, height and bulk standards also remained the same, but now medium rise apartments were permitted at 10 stories or 100 feet on minimum lot sizes of 40,000 sq ft at 60 units an acre. Retail sales and offices were permitted in medium rise apartments that were at least 6 stories and faced a street that had regular bus service or was classified as a collector or arterial street.
* Finally, the R-4 again permitted all of the prior residential uses with the addition of high rise apartments. High rise apartments were regulated by floor area ratio with a maximum density of 90 units per acre.

Much of today’s current R-1 One and Two Family Housing District was then zoned R-2. The area more commonly known as the Italian Village, or rather the area north of Christopher Columbus Dr, south of Hamilton Park Historic District, west of Harsimus Cove Historic District, and east of the Turnpike extension, zoning went from light industrial, to business and residential and light industrial, to mainly 1 and 2 family housing.

The City continued to make zoning amendment up until the introduction the today’s current zoning: the Jersey City Land Development Ordinance adopted in 2001. However, none of the amendments from 1974 to 2000 have as many drastic changes as the ordinances from 1951, 1963 and 1974. From a historic perspective, the type of zoning and the time it was created makes sense based on current Federal policy and Supreme Court land use decisions. The 1931 ordinance came after the Village of Euclid, Ohio v. Ambler Realty Co. (1926). Jersey City’s first zoning ordinance in 1931 until 1963 are clear examples of Euclidean zoning (single-use zoning). The 1974 Zoning Ordinance begins to introduce mixed uses where in the residential zones, ground floor retail is also permitted. Performance zoning started to become incorporated into the code and the code started to provide additional regulations for uses that would limit the negative impacts it could have. This, of course, does not take into account the impact of redevelopment plan areas which would have been permitted as early as 1947, and today half the of City lies in a Redevelopment Zone. The 2001 Jersey City Land Development Ordinance, currently used today with amendments as recent at June 2014 represents hybrid zoning.

Re-Zoning of Village Neighborhood

In 2010, Planning was authorized by Council to conduct a study and then propose standards for the Village North Redevelopment Plan. However, the plan was only ever heard by the Planning Board and never appeared before City Council for action to be taken. Therefore, it is to be assumed that the administration’s inaction suggests that the belief is that the existing zoning is appropriate, and a redevelopment plan is not. The study area that was proposed in the Village North Redevelopment Plan was the one area of downtown that remained with an Industrial zoning up until the JCLDO. The JCLDO then changed that area from Industrial to Residential. It is the opinion of zoning board staff that this redevelopment plan should be revisited and expanded. Moreover, if the planning board and administration do not wish to create new zoning through redevelopment, planning staff then highly recommends that the current R-1 zoning designation for the area the area north of Christopher Columbus Dr, south of Hamilton Park Historic District, west of Harsimus Cove Historic District, and east of the Turnpike extension should be modified to what is more appropriate given the existing housing and the current demand.

A study by staff of Sanborn maps and topographical surveys dating back to 1841show that this area is on land created by the drying and filling of the Mill Creek, somewhere between 1855 and 1878. The Mill Creek was a tidal creek that ran through marshlands separating Harsimus Cove from the rest of Bergen. The creek emptied into Communipaw Bay at the south, and the Hudson River at the Hoboken border at the north. Later the Communipaw Bay was filled in by the Central Railroad of New Jersey. The Mill Creek was composed of the Harsimus Creek and the Bergen Creek. The Mill Creek continued southward, and then both creeks met up around Christopher Columbus Boulevard. All of the land in between these two creek beds was marshland. A current topographical maps shows that some of the elevations in this particular area are some of the lowest elevations in downtown Jersey City. ***(See Map 2.)***

The oldest houses in this area are from 1868. The railroads had completed construction, including all the infill, in downtown Jersey City by 1862. The “New Jersey Sites Inventory Survey of Jersey City, New Jersey: Survey Area E” (1982) prepared by Dr. Joseph C. Brooks states, “Downtown had been built to capacity by the end of the Civil War.” Brooks goes on to explain that the density of downtown tripled by 1903 because many of the existing 2-story framed wood houses were replaced with 3 and 4 story structures. Additionally, early tenements start appearing in 1885 and could be built as high as 6 or 7 stories. According to the Brooks study, 76% of the housing in the Italian Village is from 1909 and before. Referencing the previous section delineating the history of zoning in Jersey City, it is clear that this area, and probably a good portion of downtown Jersey City, was built before the first zoning regulations were created in 1931.

Staff conducted a density, lot size, and building height study of this part of the “Italian Village” Neighborhood. The average density was 81 units per acre, or 3 units on 1,800 sq feet. The average height of the buildings was 3 stories. ***(See Table E)*** Many of these 3 story buildings also included basements that became unusable because of flooding issues. In this particular neighborhood, staff highly recommends either a redevelopment plan area or a re-zoning. The Medici v. BPR Co. 107 N.J. 1, 5 (1987) states at page 21

The applicants’ proofs and the boards’ findings must reconcile the proposed use variance with the zoning ordinance’s omission of the use from those permitted in the zoning district. For example, proof that the character of a community has changed substantially since the adoption of the master plan and zoning ordinance may demonstrate that a variance for a use omitted from the ordinance is not incompatible with the intent and purpose of the governing body when the ordinance was passed. Reconciliation on this basis becomes increasingly difficult when the governing body has been made aware of prior applications for the same use variance but has declined to revise the zoning ordinance.

The most current Master Plan acknowledges that commercial and industrial uses that have been in existence since 1930 are still currently existing and that while the goal is to create a low density residential neighborhood, without condemnation, these uses may and probably will continue to exist. What this means for a neighborhood, particularly this one, where the land has gone from industrial, to business, to residential/retail, is that the neighborhood will be a blend of uses. Leading to the implication that the proposed residential use is certainly not out of the intent of the zoning ordinance and master plan, but also providing context to question the appropriateness, based on the geography, and zoning history, of the permitted one and two-family use. It is the opinion of staff that based on these realities one and two family zoning is not appropriate for this area. Moreover, it is the historic development pattern of Jersey City. Once downtown had been built to capacity after the Civil War, the two story houses were replaced with the 3 and 4 story houses and 5 and 6 story tenements – in other words, to increase the density, particularly near mass transit. Finally, additional stories and increased density will provide the financial ability to create buildings more appropriate for current and increasingly worse flooding and soil issues. This area suffers from a lot of housing with poor foundations due to shifting and settlement.

Re-Zoning of the Northern Part of J.F. Kennedy Boulevard

The former 1974 R-2 zone permitted 1 and 2 families, along with townhouses, and garden apartments. All residential buildings were permitted to 4 stories or 40 feet, 2-family housing on a 2,500 sq ft lot was permitted the highest density at 35 units per acre. Retail and offices were permitted on the ground floor of garden apartments and had to have access to one of the following streets:

Hudson Boulevard (J.F. Kennedy Boulevard) north of Newark and New York Railroad; Summit Avenue north of Sip Avenue; Palisade Avenue; Newark Avenue; Montgomery Street; West Side Avenue north of Lincoln Park; Jackson Avenue (MLK Boulevard); Ocean Avenue; and Communipaw Avenue

Ground floor retail and offices were permitted along these corridors because they had direct access to streets that were mass transit was accessible. Additionally, it was historically always permitted, as early as the 1951 zoning ordinance. Planning staff, recommends that the City acknowledge this pattern of development has always existed and continues to exist either through grandfathering or variance applications. Strict R-1 zoning, excluding ground floor retail or office along the aforementioned streets is historically and currently inappropriate.

Lot Size

In order to prevent the constant lot variances, staff strongly suggests that all lots existing at the time of the 2001 Land Development Ordinance be grandfathered.